

DESCRIPTION OF THE TRANSACTION AND PUBLIC INTEREST STATEMENT

I. INTRODUCTION/OVERVIEW

Sprint Corporation (“Sprint”) and Western Wireless Corporation (“Western”) (collectively, the “Parties”), through WirelessCo, L.P. and WWC Holding Co., Inc., their respective license subsidiaries, hereby seek Federal Communications Commission (“FCC” or “Commission”) consent to the assignment, from Sprint to Western, of a disaggregated and partitioned portion of Sprint’s B-block, broadband Personal Communications Services (“PCS”) license for the Spokane-Billings MTA . Specifically, Sprint recently partitioned its 30 MHz Spokane PCS license (call sign KNLF284) to create a second 30 MHz PCS license (call sign WPZZ711) encompassing a number of counties within the State of Montana.¹ The purpose of the instant application is to obtain FCC consent to assign 10 MHz of disaggregated spectrum from WPZZ711 to Western. For the reasons set forth below, Commission approval of the proposed transaction would be consistent with the public interest, convenience and necessity.

II. DESCRIPTION OF THE PARTIES

Sprint is a national wireless communications provider headquartered in Overland Park, Kansas; Western is a regional wireless communications provider headquartered in Bellevue, Washington.² The companies are among the largest and most successful CMRS businesses in the United States, providing service to millions of subscribers. Further, both companies are led by management teams with decades of collective experience in the telecommunications industry. As such, the Parties are financially, technically and otherwise well-qualified to execute the transaction contemplated herein.

III. DESCRIPTION OF THE TRANSACTION

Sprint, through various license subsidiaries, holds numerous PCS licenses and provides wireless telecommunications services throughout the United States. In the State of Montana, where Western holds cellular and PCS licenses and has constructed a network infrastructure to provide service to its own customers principally utilizing AMPS and GSM technologies, Sprint holds overlapping PCS licenses but has not completed a network of its own. The purpose of the instant transaction is to enable Western to

¹ See FCC File No. 0001701168 (granted April 17, 2004). The Montana Counties associated with PCS Station WPZZ711 are: Big Horn, Broadwater, Carbon, Cascade, Chouteau, Custer, Dawson, Deer Lodge, Fergus, Flathead, Gallatin, Granite, Hill, Jefferson, Lake, Lewis and Clark, Madison, Mineral, Missoula, Park, Pondera, Powell, Prairie, Ravalli, Rosebud, Silver Bow, Stillwater, Sweet Grass, Teton, Toole, Treasure and Yellowstone.

² A current FCC Form 602 for Western is on file with the Commission.

construct a PCS overlay using CDMA technology on its existing network and thereby realize significant economic and resource efficiencies (as well as a time-to-market advantage) by utilizing its existing leases, tower structures and other components of its cellular system. Upon completion of the PCS overlay, Western is contractually obligated to sell roaming services to Sprint, and may eventually utilize the overlay to provide services to its own retail customers. No customers will change carriers as a result of this transaction.

IV. PUBLIC INTEREST STATEMENT

The instant transaction meets the public interest showing required for assignment and transfer of control applications.³ Specifically, the transaction fully complies with all FCC rules, requires no waivers, and will not frustrate or impair the Commission's implementation or enforcement, or the objectives, of the Communications Act of 1934, as amended,⁴ or other statutes.⁵ The transaction does not require extensive review or expenditures of considerable resources by the Commission.⁶ In addition, the transaction raises no competitive concerns.

Favorable FCC action on this application will create affirmative public interest benefits. Specifically, Western's anticipated rapid build out of a PCS overlay will help expand PCS coverage in rural areas. In addition, the overlay will expand Sprint's coverage footprint for its subscribers and therefore enhance its ability to compete with other nationwide operators in these areas, thus improving the competitive landscape. As the Commission previously noted, trends in the wireless industry that result in further geographic expansion of an operator's service areas (such as the one proposed herein) will intensify competition among nationwide providers of wireless services.⁷ And since Western is obligated to build a CDMA 1xRTT network with the acquired spectrum, the

³ See 47 U.S.C. § 310(d). In assessing the public interest benefits of a proposed transaction, the Commission considers: "(1) whether the transaction would result in the violation of the Act or any other applicable statutory provision; (2) whether the transaction would result in a violation of Commission rules; (3) whether the transaction would substantially frustrate or impair the Commission's implementation or enforcement of the Act or interfere with the objectives of that and other statutes; and (4) whether the transaction promises to yield affirmative public interest benefits." *SBC Communications Inc. and BellSouth Corp.*, 15 FCC Rcd 25459, 25463-64 (WTB/IB 2000) (citation omitted); *Ameritech Corp. and SBC Communications Inc.*, 14 FCC Rcd 14712, 14737-38 (1999) ("*Ameritech-SBC*"); see, e.g., *WorldCom, Inc. and MCI Communications Corp.*, 13 FCC Rcd 18025, 18030-33 (1998); *Merger of MCI Communications Corp. and British Telecommunications plc*, 12 FCC Rcd 15351, 15367-68 (1997).

⁴ 47 U.S.C. § 151 *et seq.*

⁵ See *Consent to the Transfer of Control of Licenses and Section 214 Authorization from Telecommunications, Inc. to AT&T Corp.*, 14 FCC Rcd 3160, 3170 (1999); *Ameritech-SBC*, 14 FCC Rcd at 14740-41.

⁶ See *Ameritech-SBC*, 14 FCC Rcd at 14740-41.

⁷ *Annual Report and Analysis of Competitive Market conditions with respect to Commercial Mobile Services*, Eighth Report, 18 FCC Rcd 14,783, ¶ 41 (2003) ("*Eighth Report*")

effect of the proposed transaction will be to increase competition and the provision of innovative, high quality services – particularly in rural areas – faster than it would otherwise occur. In this regard, the rapid and efficient technological and other investments in these markets that will flow from the proposed assignment will improve the services available to the public and generally increase competition in these service areas.

V. SPECTRUM AGGREGATION/COMPETITION ANALYSIS

Consistent with informal guidance from Commission staff in other recent transactions, attached hereto as Schedule A is a chart depicting Western's spectrum holdings (both before and after the proposed transaction) in each of the counties where it will acquire additional spectrum as a result of this application. As Schedule A demonstrates, Western's total spectrum holdings will continue to be either below or at the levels permitted under the former spectrum cap rules in each of the subject markets,⁸ with the single exception of Flathead County in BTA No. 224(Kalispell, MT). In that county, Western currently holds 55 MHz of spectrum, and proposes to acquire an additional 10 MHz, for a total of 65 MHz. As discussed below, the strong current competition will not be adversely affected by this aggregation.

The proposed assignment will also not reduce competition, nor the total number of competitors, in any of the subject markets. Rather, the assignment will allow Western to enter each market with new technology, while simultaneously bolstering Sprint's competitive position. Specifically, Sprint currently does not offer facilities-based services in the market other than analog-only roaming services. The proposed assignment, together with the contractual obligations imposed on Western to build a CDMA 1xRTT network, will therefore enhance Sprint's competitive presence. Moreover, following the assignment, Sprint will retain 20 MHz of disaggregated PCS spectrum in each of these areas which it will use over time for capacity expansion purposes. Finally, as requested by Commission staff, attached hereto as Schedule B is a chart depicting the number and identity of the various terrestrial-based wireless competitors operating in each of the markets subject to the instant transaction. As *Schedule B* demonstrates, each of these markets is already served by multiple competitors.

Even in those markets where Western will have the largest share of available CMRS spectrum, at least two other facilities based carriers exist,⁹ and the competitive

⁸ See 2000 Biennial Regulatory Review of Spectrum Aggregation Limits for Commercial Mobile Radio Services, Report and Order, 16 FCC Rcd 22,668 (2001).

⁹ In BTA224 (Kalispell), in which Flathead County is located, at least six facilities-based carriers (in addition to Sprint and Western) have filed construction notifications, namely: AN Subsidiary, LLC, CenturyTel Investments of Texas, Gold Creek Cellular of Montana Limited Partnership (Verizon Wireless), Montana Wireless (d/b/a Blackfoot Communications), Summit Wireless, and VoiceStream PCS. See Schedule B.

nature of the CMRS market, generally, and the presence of a number of facilities based and resale competitors, specifically, will assure that price plans available to subscribers remain consistent with those in markets where four, five or even six facilities-based competitors exist. As the Commission concluded in its most recent CMRS competition report “effective CMRS competition does exist in rural areas.”¹⁰ Marketplace forces are producing a highly competitive environment for spectrum-based services including in rural areas.

Nationwide carriers offer rate plans with large buckets of minutes for low monthly fees covering nationwide service areas and continue to offer increasingly advanced services and features. This competitive environment drives the average price of mobile service to be very similar in urban and rural markets, particularly for a regional carrier such as Western that focuses primarily on non-urban markets. Consumers in rural markets are aware of the rates and services offered by nationwide carriers, either from a nationwide carrier that offers services in their markets or in adjacent markets, or because of regional and national advertising on available media; these subscribers and potential subscribers demand these same choices in rural markets. Western’s prices are disciplined by the rate plans offered by the fiercely competing nationwide carriers, and Western Wireless must offer similar rate plans in its markets even when not all of these nationwide and regional competitors have substantial facilities in any particular market. Indeed, this disciplining force exists even for areas where the economics do not support facilities-based entry by all six nationwide carriers.

Furthermore, as this case adequately demonstrates, the nationwide carriers’ presence in a market is not limited to facilities; many are extending their footprints into rural areas by creating roaming and affiliation agreements to fill out their service territory. Because of their strong market power, nationwide carriers would be able to undercut any higher-priced local or regional service provider particularly where they can duplicate claimed coverage through roaming arrangements (such as those Western has with T-Mobile and will have with Sprint).

Pricing plans across the country that wireless carriers are offering are also competitive with the incumbent rural LECs. This additional source of competition, particularly in rural areas, serves as a further check on the prices rural wireless carriers such as Western can charge. In addition to competition within the CMRS industry, Western’s ability to raise rates is also constrained by the rates charged in rural areas by the local wireline service provider.

The prominence of national and regional markets for wireless services, along with the threat of competition from other providers, ensures that no carrier can unilaterally raise rates above reasonable levels without risking substantial losses in market share. A search of the relevant websites for Western (www.wwireless.com), Verizon Wireless

¹⁰ *Eighth Report* at ¶ 120.

(www.verizonwireless.com)(which offers service throughout the market on the other cellular band), 3Rivers PCS (www.3riverswireless.com) and Blackfoot Communications (www.blackfoot.net), all of which provide facilities based services throughout the State of Montana, easily demonstrates the competitive nature of this area, and the similarity of the area's rates to those generally available in other urban, suburban and rural parts of the country.

VI. CONCLUSION

For the foregoing reasons, a grant of the instant application will serve the public interest, convenience, and necessity.